

VOICE DOMAIN TECHNOLOGIES, LLC, §
 Plaintiff, §
 v. §
 APPLE INC., §
 Defendant. §
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**DEFENDANT APPLE INC.’S SUPPLEMENTAL SUBMISSION ADDRESSING
ISSUES RAISED AT THE PROTECTIVE ORDER HEARING**

Defendant Apple Inc. (“Apple”) respectfully furnishes this supplemental submission to address two discrete issues raised in open court at the September 5, 2014 hearing on the parties’ competing requests for entry of a protective order in the above-referenced matter.

First, the Court indicated that it would be of assistance in assessing the harm that Mr. Barker could purportedly incur if it had some sense as to what types of financial documents Apple would be willing to allow Mr. Barker to see that would be relevant to the issues in dispute in this case. *See* Transcript of September 5, 2014 Hearing (“Tr.”) at 9. Apple is amenable to allowing Mr. Barker to review the following types of financial documents following the commencement of fact discovery, which will likely be designated CONFIDENTIAL – ATTORNEYS’ EYES ONLY (“AEO”) (subject to the terms of the protective order entered by the Court):

- Apple summary financial reports for relevant time periods that show the price and number of units sold of the accused devices;
- Licenses potentially relevant to the determination of a reasonable royalty in this case, if any; and
- Agreements potentially relevant to valuation of the voice-recognition software at issue in this litigation, such as the Siri Acquisition Agreement.

Fact discovery has not yet commenced, and Apple may be willing to make additional relevant, non-objectionable financial documents available for Mr. Barker’s review on a case-by-case basis, to the extent they exist and are identified in the course of a reasonable search for documents in this matter.

Second, Apple is also amenable to allowing attorneys from Fisch Sigler LLP who have

not accessed or reviewed Apple's documents and other information designated as AEO or CONFIDENTIAL – ATTORNEYS' EYES ONLY - SOURCE CODE ("SOURCE CODE") under the protective order to represent Voice Domain in a post-grant proceeding before the U.S. Patent & Trademark Office such as an *inter partes* review for all purposes, including drafting and amending claims. As identified at the hearing, Apple is amenable to this proposal on the condition that Voice Domain establishes an appropriate ethical wall, and that documents and information designated by Apple as AEO or SOURCE CODE not be shared (in whole or in part) or communicated in any way between (i) any member of the Fisch Sigler, Voice Domain litigation team (including Messrs. Battaglia and Scoolidge), on the one hand, and (ii) any member of the Fisch Sigler, Voice Domain post-grant team, on the other hand. Such ethical wall shall also prohibit any member of the Fisch Sigler, Voice Domain litigation team from drafting or amending claims in a post-grant proceeding, but shall not prohibit the Fisch Sigler, Voice Domain litigation team from communicating with the post-grant team regarding prior art to the patent-in-suit, including prior art already furnished to Voice Domain by Apple along with its invalidity contentions. *See Endo Pharmaceuticals Inc. v. Actavis Inc., et al.*, C.A. No. 12-cv-08060, *slip op.* at 11 (S.D.N.Y. Aug. 13, 2014). This would obviate the concern raised by certain courts that the plaintiff would be forced "to defend a patent in two separate venues with two separate teams of attorneys." *Mirror Worlds LLC v. Apple, Inc.*, No. 08-cv-88, 2009 WL 2461808, at *2 (E.D. Tex. Aug. 11, 2009).

Dated: September 19, 2014

Respectfully submitted,

/s/ Nicholas G. Papastavros

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on September 19, 2014.

/s/Nicholas G. Papastavros
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